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**IN THE UNITED STATES DISTRICT COURT**  
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**FOR THE DISTRICT OF ARIZONA**  
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9       Enrique Munoz,

No. CV-24-00307-TUC-JR

10                  Plaintiff,

**REPORT AND RECOMMENDATION**

11       v.

12       13 Custom Cabinets LLC, et al.,

13                  Defendants.

14  
15                  Before the Court is Plaintiff's Motion for Default Judgment ("Motion"). (Doc. 13.)  
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17                  Lacking jurisdiction to enter a final judgment because of incomplete status of election by  
18                  the parties, this Court prepares a Report and Recommendation to United States Senior  
19                  Judge Raner C. Collins.<sup>1</sup> <sup>2</sup> As more fully set forth below, this Court recommends that the  
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22                  <sup>1</sup> General Order 21-25 provides, in relevant part, "[w]hen a United States Magistrate Judge  
23                  to whom a civil action has been assigned pursuant to Local Rule 3.7(a)(1) considers  
24                  dismissal to be appropriate but lacks the jurisdiction to do so under 28 U.S.C. § 636(c)(1)  
25                  due to incomplete status of election by the parties to consent or not consent to the full  
26                  authority of the Magistrate Judge, the Magistrate Judge will prepare a Report and  
27                  Recommendation for the Chief United States District Judge or designee." Gen. Ord. 21-  
28                  25. Although this Court is not recommending dismissal—but is recommending entry of a  
29                  final judgment—this Court lacks the jurisdiction to enter a final judgment due to  
30                  incomplete status of election. See 28 U.S.C. § 636. Accordingly, this Court prepares this  
31                  Report and Recommendation pursuant to the directive in General Order 21-25.

32                  <sup>2</sup> As of this date of this Report and Recommendation the Chief United States District Judge  
33                  for the District of Arizona is Jennifer G. Ziggs. However, General Order 21-25 has not  
34                  been superseded.

1 district court grant the Motion.

2           **I. BACKGROUND**

3           On June 20, 2024, Plaintiff filed his Verified Complaint against Defendants 13  
4 Custom Cabinets, LLC, Frank Amavizca and Maria Amavizca. (Doc. 1.) In Count One,  
5 Plaintiff seeks unpaid overtime wages and an equal amount in liquidated damages under  
6 the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 206(a). (Doc. 1 at ¶¶ 68-75.) In Count  
7 Two, Plaintiff seeks unpaid minimum wages and an equal amount in liquidated damages  
8 under the FLSA, 29 U.S.C. § 216. (Doc. 1 at ¶¶ 76-80.) In Count Three, Plaintiff seeks  
9 unpaid minimum wages and an amount equal to twice the underpaid wages under the  
10 Arizona Minimum Wage Act (“AMWA”), Ariz. Rev. Stat. § 23-363 (minimum wage), §  
11 23-364(G) (enforcement). (Doc. 1 at ¶¶ 81-85.) In Count Four, Plaintiff seeks unpaid wages  
12 due and a trebling of this amount under the Arizona Wage Act (“AWA”), Ariz. Rev. Stat.  
13 § 23-350, § 23-355 (authorizing treble damages). (Doc. 1 at ¶¶ 86-92.)

14           All Defendants were served on July 13, 2024. (Doc. 8-10.) Defendants failed to  
15 answer or otherwise appear. On Plaintiff’s application, the Clerk of the Court entered  
16 default against all Defendants on August 19, 2024. (Doc. 12.) Plaintiff now moves for entry  
17 of default judgment against all Defendants. (Doc. 13.)

18           **II. LEGAL STANDARD**

19           District courts have discretion to enter a default judgment pursuant to Rule 55(b) of  
20 the Federal Rules of Civil Procedure. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir.  
21 1980). “If default judgment is sought against a party that failed to plead or otherwise  
22 defend, courts must determine they have subject matter jurisdiction over the matter and

1 personal jurisdiction over the party.” *Verduzco v. Value Dental Centers Mesa W. AZ LLC*,  
 2 No. CV-20-02380-PHX-DJH, 2021 WL 4222005, at \*1 (D. Ariz. Sept. 16, 2021) (citing  
 3 *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999)).  
 4

5 After finding that it has jurisdiction, the district court “is not required to make  
 6 detailed findings of fact,” but should consider and weigh relevant factors. *Fair Housing of*  
 7 *Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002). Relevant factors that may be  
 8 considered are: “(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s  
 9 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the  
 10 action; (5) the possibility of a dispute concerning material facts; (6) whether the default  
 11 was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of  
 12 Civil Procedure favoring decisions on the merits.” *Eitel v. McCool*, 782 F.2d 1470, 1471–  
 13 72 (9th Cir. 1986). In considering the merits and sufficiency of the complaint, the court  
 14 accepts as true the complaint’s well-pled factual allegations, but the plaintiff must establish  
 15 all damages sought. *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977). See  
 16 also *Gummel v. Systemhouse, Inc.*, No. CV-04-187-TUC-CKJ, 2008 WL 65604, at \*3 (D.  
 17 Ariz. Jan. 3, 2008) (once default has been entered the district court takes as true all well-  
 18 pled factual allegations in the complaint except for those related to the amount of damages).  
 19

### 20 III. ANALYSIS

#### 21 a. Jurisdiction

22 Plaintiff’s Motion does not address the jurisdictional requirement. Nonetheless, this  
 23 Court finds that the district court has subject matter and personal jurisdiction. The district  
 24 court has federal question jurisdiction over Plaintiff’s claims in Count One (failure to pay  
 25

1 overtime) and Two (failure to pay minimum wage) because they arise under the FLSA.  
2 (Doc. 1 at ¶¶ 68-80.); *see* 28 U.S.C. § 1331 (providing that federal courts have original  
3 jurisdiction to hear claims arising under federal law). Also, because the district court has  
4 federal question jurisdiction over Plaintiff's claims alleged in Counts One and Two, the  
5 district court has supplemental jurisdiction over Plaintiff's Arizona wage claims alleged in  
6 Counts Three and Four. *See* 28 U.S.C. § 1337(a) (authorizing supplemental jurisdiction  
7 over state law claims that are “part of the same case or controversy[.]”)

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9  
10 This Court is satisfied that the district court also has personal jurisdiction over the  
11 Defendants because Plaintiff's claims arise from Defendants' alleged failure to comply  
12 with federal and state wage laws during their business activities in Pima County, Arizona.  
13 *See Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015). The record establishes that all  
14 Defendants were served with a Summons and the Verified Complaint in accordance with  
15 the applicable rules of civil procedure. (Docs. 8-10.)  
16  
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18 This Court finds that the district court has subject matter and personal jurisdiction.

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20       **b. The *Eitel* Factors**

21 As mentioned above, in determining whether to enter a default judgment the district  
22 court considers the factors enumerated by the United States Court of Appeals for the Ninth  
23 Circuit in *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). This Court considers  
24 the *Eitel* factors below *in seriatim*.

25  
26           i. Possible Prejudice to Plaintiff

27 The first *Eitel* factor considers whether Plaintiff will suffer prejudice if a default  
28 judgment is not entered. *Id.* at 1471. Defendants have not answered the Verified Complaint,

nor have they otherwise appeared in this action. Thus, Plaintiff has no alternative means by which to resolve his claims against Defendants. Without a default judgment, Plaintiff's damages would remain unrelieved. As such, this Court finds that the first *Eitel* factor weighs in favor of entering a default judgment.

ii. The Merits of Plaintiff's Claims and the Sufficiency of the Verified Complaint

The second *Eitel* factor considers the merits of the plaintiff's substantive claim. *Eitel*, 782 F.2d at 1471. The third *Eitel* factor considers the sufficiency of the complaint. *Id.* The second and third *Eitel* factors "are often analyzed together." *Dr. JKL Ltd. v. HPC IT Educ. Ctr.*, 749 F. Supp. 2d 1038, 1048 (N.D. Cal. 2010). These two factors require that the plaintiff's allegations "state a claim on which [he] may recover." *Id.* (quoting *Danning v. Lavine*, 52 F.2d 1386, 1388 (9th Cir. 1978)).

The Verified Complaint alleges claims of failure to pay wages and overtime wages under the FLSA, AMWA, and the AWA. This Court examines the sufficiency of Plaintiff's claims alleged in his Verified Complaint below.

#### *1. FLSA Claims (Counts One and Two)*

“The FLSA requires employers to pay their employees a minimum wage for any time spent working during the workweek as well as additional compensation for any time spent in excess of a forty-hour workweek.” *Avila v. JBL Cleaning Servs. LLC*, No. CV-23-00398-PHX-DJH, 2024 WL 863710, at \*3 (D. Ariz. Feb. 29, 2024) (citing 29 U.S.C. §§ 206(a), 207(a)). Under the FLSA, an “employee” is defined as “any individual employed by an employer” and “employer” is defined as “any person acting directly or indirectly in

1 the interest of an employer in relation to an employee.” *Avila*, 2024 WL 863710, at \*3  
2 (citing 29 U.S.C. § 203(d), (e)(1)).  
3

4 The District Court for the District of Arizona has recognized that “[a]n employee  
5 can gain protection under the FLSA through (1) enterprise coverage if her employer has an  
6 annual gross volume of sales or business done that is greater than \$500,000; or (2)  
7 individual coverage if the employee is ‘engaged in commerce or in the production of goods  
8 for commerce.’” *Avila*, 2024 WL 863710, at \*3 (quoting 29 U.S.C. §§ 203(s)(1)(A); and  
9 citing *Zorich v. Long Beach Fire Dep’t & Ambulance Serv., Inc.*, 118 F.3d 682, 686 (9th  
10 Cir. 1997)). “An individual can be subject to liability under the FLSA as an employer if  
11 they ‘exercise[] control over the nature and structure of the employment relationship, or  
12 economic control over the relationship.’” *Avila*, 2024 WL 863710, at \*3 (quoting *Boucher  
13 v. Shaw*, 572 F.3d 1087, 1091 (9th Cir. 2009)).  
14

15 Here, Plaintiff alleges that Defendant 13 Custom Cabinets, LLC is “an enterprise  
16 engaged in commerce that had annual gross sales of at least \$500,000” in 2022, 2023 and  
17 2024. (Doc. 1 at ¶¶ 27-29.) Plaintiff also alleges that Defendants Frank Amavizca and  
18 Maria Amavizca “had the authority to hire and fire employees, supervised and controlled  
19 work schedules or the conditions of employment, determined the rate and method of  
20 payment, and maintained employment records in connection with Plaintiff’s employment  
21 with Defendants.” *Id.* at ¶¶ 16, 42. This Court finds that Plaintiff sufficiently alleges that  
22 he was an employee and that all Defendants are employers under the FLSA.  
23

24 “To bring an FLSA claim for unpaid minimum wages, a plaintiff must ‘allege facts  
25 showing that there was a given week in which he was entitled to but denied minimum  
26

wages[.]”” *Avila*, 2024 WL 863710, at \*4 (quoting *Landers v. Quality Commc'ns, Inc.*, 771 F.3d 638, 645 (9th Cir. 2014)). “To bring an FLSA claim for unpaid overtime wages, a plaintiff must allege at least one workweek in which she worked in excess of forty hours and w[as] not paid overtime wages.” *Avila*, 2024 WL 863710, at \*4 (citing *Landers*, 771 F.3d at 646.) Plaintiff alleges in his Verified Complaint that during his employment with Defendants he worked “approximately between 48 and 55 hours per workweek.” (Doc. 1 at ¶ 44.) He alleges that he worked 15 hours of overtime in his penultimate workweek for which he was not paid. *Id.* at ¶¶ 45, 47. He also alleges that in his final week of employment he worked 10 hours for which he was not paid. *Id.* at ¶¶ 46-47. Taking Plaintiff’s allegations as true, this Court finds that Plaintiff alleges plausible FLSA claims for unpaid wages and unpaid overtime.

## 2. AMWA (*Count Three*)

The AMWA defines an “employee” as “any person who is or was employed by an employer.” Ariz. Rev. Stat. § 23-362(A). “[E]mployer” is defined, in pertinent part, as “any . . . limited liability company . . . [or] individual . . . acting directly or indirectly in the interest of an employer in relation to an employee.” Ariz. Rev. Stat. § 23-362(B). *See also Avila*, 2024 WL 863710, at \*4.

Plaintiff alleges that Defendant 13 Custom Cabinets, LLC is a limited liability corporation, and that Defendants Frank and Maria Amavizca are husband and wife and “are owners [of]” Defendant 13 Custom Cabinets, LLC. (Doc. 1 at ¶¶ 12- 13, 15.) Plaintiff sufficiently alleges that all Defendants are liable under the AMWA as employers. Plaintiff alleges Defendants failed to compensate him for all the hours he worked the last two weeks

1 of his employment. *Id.* at ¶ 82-84.

2 This Court finds that Plaintiff alleges a plausible claim for unpaid minimum wages  
3 under the AMWA.

5                   3. AWA Claim (Count Four)

6                   Section 23-351(C), Ariz. Rev. Stat., requires, in pertinent part, that “[e]ach  
7 employer, on each of the regular paydays, shall pay to the employees all wages due to the  
8 employees up to that date[.]” Ariz. Rev. Stat. § 23-351(C). “Employee” is defined as “any  
9 person who performs services for an employer under a contract of employment either made  
10 in this state or to be performed wholly or partly within this state.” Ariz. Rev. Stat. § 23-  
11 350(2). The AWA limits the term “employer” to include “any individual, partnership,  
12 association, joint stock company, trust or corporation, the administrator or executor of the  
13 estate of a deceased individual or the receiver, trustee or successor of any of such persons  
14 employing any person.” Ariz. Rev. Stat. § 23-350(3). The district courts in Arizona have  
15 recognized that the AWA “does not ... authorize individual liability against the owners,  
16 officers, and directors of a corporate employer in a case where the claim is for the  
17 employer's wholesale failure to pay wages.” *Avila*, 2024 WL 863710, at \*4 (quoting *Rosen*  
18 v. *Fasttrak Foods LLC*, No. CV-19-05292-PHX-DWL, 2021 WL 2981590, at \*5 (D. Ariz.  
19 July 15, 2021)).

20                 Plaintiff has alleged that he was employed by Defendant 13 Custom Cabinets, LLC  
21 for purposes of the AWA, and that this Defendant failed to pay him for the hours that he  
22 worked the last two weeks of his employment. (Doc. 1 at ¶¶ 87-91). As Plaintiff recognizes,  
23 considering Ariz. Rev. Stat. § 23-350(3)'s narrow definition of employer, Defendants Frank

1 and Maria Amavizca cannot be held individually liable on Plaintiff's claim in Count Four.  
 2 This Court finds that Plaintiff alleges a plausible claim for unpaid wages under the AWA  
 3 against Defendant 13 Custom Cabinets, LLC only.  
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5                   iii. The Sum of Money at Stake

6                   Under the fourth *Eitel* factor the district court considers the amount of money at  
 7 stake<sup>3</sup> in relation to the seriousness of the defendant's conduct. *Eitel*, 782 F.2d at 1471. "If  
 8 the sum of money at stake is completely disproportionate or inappropriate, default  
 9 judgment is disfavored." *Gummel*, 2008 WL 65604, at \*4. Plaintiff seeks unpaid wages and  
 10 overtime wages. (Doc. 13 at p. 7.) He seeks liquidated damages under the FLSA and the  
 11 AMWA. *Id.* at pp. 9-10. He also seeks treble damages under the AWA. *Id.* at pp. 10.  
 12 Plaintiff claims he is entitled to a total award in the amount of \$8,000.00. *Id.*  
 13

14                   This Court finds that the sum of money sought is reasonable and proportional to the  
 15 seriousness of Defendants' conduct. Thus, this Court finds that this factor weighs in favor  
 16 of entry of default judgment.  
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18                   iv. The Possibility of a Dispute Concerning Material Facts

19                   The fifth *Eitel* factor considers the possibility of a dispute concerning material facts.  
 20 *Eitel*, 782 F.2d at 1471-72. Defendants have failed to answer the Verified Complaint and  
 21 the time has passed for Defendants to dispute the well-pleaded allegations of the Verified  
 22 Complaint. Accordingly, the well-pleaded allegations are treated as true. *Verduzco*, 2021  
 23 WL 4222005, at \*2. This Court finds that the possibility of a dispute concerning any  
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27                   <sup>3</sup> A thorough examination of Plaintiff's claimed damages is set forth at Section III(c), *infra*.  
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materials facts is low. *See STORE Master Funding II LLC*, 2021 WL 3290531, at \*4 (holding that “[h]ere, there is very little possibility of dispute concerning the material facts. Defendant has not made any effort to challenge Plaintiff’s Complaint or otherwise appear in this case, despite being served with process in this action.”).

This Court finds that the fifth *Eitel* factor weighs in favor of entering default judgment.

v. Whether the Default was Due to Excusable Neglect

The sixth *Eitel* factor considers whether the default is due to excusable neglect. *Eitel*, 782 F.2d at 1472. Defendants were served with the Verified Complaint. This Court finds that there is no evidence that Defendants failed to appear because of excusable neglect.

This Court finds that the sixth *Eitel* favors the entry of default judgment.

## vi. The Policy Favoring Decisions on the Merits

The seventh *Eitel* factor requires the district court to consider the policy that cases should be decided on the merits when possible. *Id.* This factor necessarily weighs against entering a default judgment in every case in which a default judgment is sought. “However, the mere existence of Fed. R. Civ. P. 55(b) indicates that ‘this preference, standing alone, is not dispositive.’” *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002) (quoting *Kloepping v. Fireman’s Fund*, 1996 WL 75314, at \*2 (N.D. Cal. 1996)).

Here, the Court finds that deciding this case on the merits is impossible due to Defendants' failure to defend. *See PepsiCo, Inc.*, 238 F. Supp. 2d at 1177 ("Moreover, [d]efendant's failure to answer [p]laintiffs' [c]omplaint makes a decision on the merits

impractical, if not impossible.”). The policy of favoring a decision on the merits cannot be met in this case, and Rule 55(a) permits termination of a case before the merits are reached when a defendant fails to defend. *See Fed. R. Civ. P. 55(a)*. Accordingly, this Court finds that while the seventh *Eitel* factor weighs against the entry of default judgment, this factor does not preclude the entry of default judgment.

This Court finds that all but the seventh the *Eitel* factor favors entry of default judgment. As the majority of the *Eitel* factors favor entry of default judgment, this Court recommends that a default judgment be entered.

### c. Damages

“In contrast to the other allegations in the [c]omplaint, allegations pertaining to damages are not taken as true.” *STORE Master Funding II LLC*, 2021WL 3290531, at \*3 (citing *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987)). “As a result, ‘Plaintiff is required to prove all damages sought in the complaint.’” *STORE Master Funding II LLC*, 2021 WL 3290531, at \*3 (quoting *Philip Morris USA Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 498 (C.D. Cal. 2003)). “Damages may be proven through either an evidentiary hearing, or through affidavits and other documents as exhibits that provide a factual basis for determining the amount of a default judgment award.” *Vaile v. Nat'l Credit Works, Inc.*, No. CV-11-674-PHX-LOA, 2012 WL 176314, at \*2 (D. Ariz. Jan. 23, 2012). “The Court may enter a default judgment without a damages hearing when ... ‘the amount claimed is a liquidated sum or capable of mathematical calculation.’” *Capitol Specialty Ins. Corp. v. Chaldean LLC*, 2022 WL 2953062, at \*5 (D. Ariz. July 25, 2022) (quoting *HTS, Inc. v. Boley*, 954 F. Supp. 2d 927, 947 (D. Ariz. 2013)); *Davis v.*

1       *Fendler*, 650 F.2d 1154, 1161 (9th Cir. 1981).

2                  Through a declaration submitted in support of his motion, Plaintiff establishes that  
 3 Defendants own and operate a carpentry and custom cabinetry company. (Doc. 13-1 at ¶  
 4 5.) Plaintiff worked for Defendants as a cabinet installer from approximately October 2023  
 5 through approximately February 2024 (about 21 workweeks) *Id.* at ¶¶ 3-4, 6. Plaintiff's  
 6 regular rate of pay was \$20.00 per hour. *Id.* at ¶ 7. He estimates that he worked  
 7 approximately 50 hours per week for approximately 19 of his 21-workweek employment.  
 8 *Id.* at ¶ 8. He avers that he was "never paid overtime for time he worked in excess of 40  
 9 hours in a given workweek." *Id.* at ¶ 10. In his penultimate workweek, Plaintiff estimates  
 10 he worked slightly more hours—approximately 55 hours. *Id.* at ¶¶ 11, 14. In his final  
 11 workweek, he estimates that he worked approximately 10 hours. *Id.* at ¶ 11. Plaintiff avers  
 12 that "[h]e was not paid any wage whatsoever for the final two workweeks of his  
 13 employment." *Id.* at ¶¶ 9.

14                  i. Unpaid Wages and Unpaid Overtime

15                  This Court finds that Plaintiff has sufficiently established his unpaid wage and  
 16 unpaid overtime damage as follows:

17                  *Unpaid Minimum Wages for Two Workweeks:* Plaintiff worked approximately 55  
 18 hours in his penultimate workweek and 10 hours in his final workweek for a total of 65  
 19 unpaid hours. This Court finds that Plaintiff has established that his unpaid federal  
 20 minimum wage damages for those two weeks total \$471.25.<sup>4</sup> This Court also finds that  
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<sup>4</sup> The federal minimum hourly rate of \$7.25 multiplied by 65 hours.

1 Plaintiff has established that his unpaid Arizona minimum wages for his final two  
 2 workweeks total \$929.50.<sup>5</sup>  
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4       *Unpaid Regular Rate Wages for Two Workweeks:* Plaintiff has established that he  
 5 worked 55 hours in his penultimate workweek and 10 hours in his final workweek for a  
 6 total of 65 unpaid hours. Plaintiff was not paid any wages for these two weeks. This Court  
 7 finds that Plaintiff has established that his unpaid regular rate wages for his final two weeks  
 8 of employment total \$1,300.00.<sup>6</sup>  
 9

10      *Unpaid Overtime for Entire Employment:* Plaintiff establishes that he was never  
 11 paid overtime for the duration of his entire employment. He conservatively estimates that  
 12 he worked 50 hours per week for such time, except in his penultimate workweek in which  
 13 he worked 55 hours. Thus, this Court finds that Plaintiff establishes that he worked  
 14 approximately 205 hours for which he should have been paid an overtime premium of  
 15 \$10.00<sup>7</sup> per hour. This Court finds that Plaintiff's unpaid overtime wages total \$2,050.00.  
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18           ii. Statutory Damages

19      *FLSA:* When an employer is found liable under the FLSA for failure to pay  
 20 minimum and overtime wages, the employee is entitled to "unpaid minimum wages, [ ]  
 21 unpaid overtime compensation ... and in an additional equal amount as liquidated  
 22 damages." *Avila*, 2024 WL 863710, at \*6 (quoting 29 U.S.C. § 216(b)). "Double damages  
 23 are the norm, and single damages are the exception." *Avila*, 2024 WL 863710, at \*6 (citing  
 24 *Alvarez v. IBP, Inc.*, 339 F.3d 894, 910 (9th Cir. 2003)). This Court finds that Plaintiff is  
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27      <sup>5</sup> The Arizona minimum hourly rate of \$14.35 multiplied by 65 hours.  
 28      <sup>6</sup> Sixty-five hours multiplied by Plaintiff's regular pay rate of \$20.00 per hour.  
       <sup>7</sup> One-half of Plaintiff's regular rate of pay of \$20.00 per hour.

1 entitled to the amount of \$929.50 as liquidated damages under the FLSA for unpaid  
2 minimum wages. This Court also finds that Plaintiff is entitled to liquidated damages in  
3 the amount of \$4,100.00 under the FLSA for his unpaid overtime.  
4

5 *AMWA:* District courts in Arizona have recognized that for an employer's failure to  
6 pay minimum wages the AMWA entitles an employee to 'the balance of the wages ...  
7 including interest thereon, and an additional amount equal to twice the underpaid wages  
8 ....'" *Avila*, 2024 WL 863710, at \*6 (quoting Ariz. Rev. Stat. § 23-364(G).) This Court  
9 finds that Plaintiff is entitled to the amount of \$2,788.50 as liquidated damages under the  
10 AMWA.  
11

12 *AWA:* When an employer is found liable under the AWA for failure to pay wages  
13 "the employee may recover ... an amount that is treble the amount of the unpaid wages."  
14 *Avila*, 2024 WL 863710, at \*6 (quoting Ariz. Rev. Stat. § 23-355(A).) This Court finds that  
15 Plaintiff is entitled to recover the amount of \$3,900.00 as liquidated damages under the  
16 AWA against Defendant 13 Custom Cabinets, LLC only.  
17

18 In his motion, Plaintiff states that "\$3,900 is the appropriate total unpaid wages  
19 award." (Doc. 13 at 10.) Plaintiff explains that her larger trebled AWA award of \$3,900.00  
20 "engulfs" the smaller AMWA minimum wage damage award, which also "engulfs" the  
21 smaller minimum wage damage award under the FLSA. *Id.* This Court agrees that Plaintiff  
22 is not entitled to stack his unpaid minimum wage damages. *See Gen. Tel. Co. of the Nw.,*  
23 *Inc. v. EEOC*, 446 U.S. 318, 333, (1980) (recognizing that "courts can and should preclude  
24 double recovery by an individual"). Thus, this Court will recommend that Plaintiff be  
25 awarded \$3,900.00 as and for a total unpaid wages award.  
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1                   **IV. DAMAGES SUMMARY**

2                   This Court finds that Plaintiff's damages request is provided for by statute and  
 3 adequately supported by the calculations in his motion and declaration. (Doc. 13, 13-1.)  
 4 Consistent with Plaintiff's calculations this Court finds that all Defendants are joint and  
 5 severally liable under the FLSA and AMWA. This Court finds that only Defendant 13  
 6 Custom Cabinets, LLC is liable under the AWA. Accordingly, this Court recommends that  
 7 Plaintiff's Motion be granted and judgment entered in Plaintiff's favor as follows:

8                   This Court recommends that Plaintiff be awarded total damages in the amount of  
 9 \$8,000.00.<sup>8</sup> This Court recommends that \$6,888.50<sup>9</sup> of the \$8,000.00 award be jointly and  
 10 severally against all Defendants. This Court recommends that \$1,111.50 of \$8,000.00  
 11 award be awarded against Defendant 13 Custom Cabinets, LLC only in accordance with  
 12 Ariz. Rev. Stat. § 23-355.

13                  Plaintiff has requested post-judgment interest and has advised the Court that he will  
 14 file a motion for attorneys' fees "following any award of a default judgment." (Doc. 13 at  
 15 11.) This Court recommends that the district court also award Plaintiff post-judgment  
 16 interest and allow him to seek an award of attorneys' fees in accordance with Local Rule  
 17 of Civil Procedure 54.2.

18                   **V. RECOMMENDATION**

19                  As set forth above, this Court finds that Plaintiff is entitled to entry of default

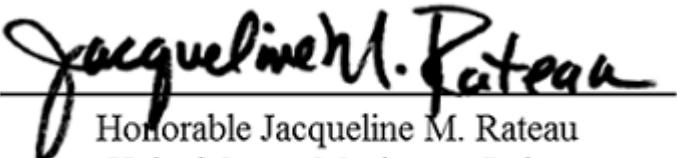
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<sup>8</sup> This sum consists of \$3,900.00 in trebled unpaid wages and \$4,100.00 in unpaid doubled  
 28 overtime damages.

<sup>9</sup> This sum consists of \$2,788.50 in trebled unpaid minimum wage damages and \$4,100.00  
 in unpaid doubled overtime damages.

1 judgment. Accordingly, **IT IS RECOMMENDED** that Plaintiff's Motion for Default  
2 Judgment be **GRANTED**. Pursuant to Federal Rule of Civil Procedure 72(b)(2), any party  
3 may serve and file written objections within fourteen days of being served with a copy of  
4 the Report and Recommendation. A party may respond to the other party's objections  
5 within fourteen days. No reply brief shall be filed on objections unless leave is granted by  
6 the district court. If objections are not timely filed, they may be deemed waived. If  
7 objections are filed, the parties should use the following case number: **4:24-cv-307**.

10 Dated this 10th day of January, 2025.

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14 Honorable Jacqueline M. Rateau  
15 United States Magistrate Judge  
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